



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

SMC
Docket No: 06051-00
26 January 2001

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: AE2 [REDACTED], USN [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 28Aug00 w/attachments
(2) Memo for record dtd 17Jan01
(3) PERS-311 memo dtd 19Dec00
(4) PERS-85 memo dtd 5Jan01
(5) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, originally filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by changing his enlisted performance evaluation report for 16 March 1998 to 15 March 1999, by removing from block 43 ("Comments on Performance") all reference to his nonjudicial punishment (NJP) of 12 March 1999, which has been set aside; changing block 36 ("Military Bearing") from "1.0" to "4.0" and changing block 45 ("Promotion Recommendation") from "Significant Problems" to "Early Promote." A copy of this report is at Tab A. The memorandum for the record at enclosure (2) documents that Petitioner later amended his application to clarify that completely removing this report would be acceptable. He also requested advancement to petty officer first class (pay grade E-6) and award of the Navy and Marine Corps Achievement Medal. The Board did not consider Petitioner's request for the medal, as he has not exhausted his administrative remedies. He may resubmit the recommendation that he receive the medal to the command where it originated, with a request for reconsideration in light of the action to set aside his NJP, and the further correction of his record indicated below.

2. The Board, consisting of Messrs. Harrison and Schultz and Ms. Moidel, reviewed Petitioner's allegations of error and injustice on 25 January 2001, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Except as indicated above, before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. In correspondence attached as enclosure (3), PERS-311, the Navy Personnel Command (NPC) office having cognizance over Navy performance evaluation reports, has commented to the effect that Petitioner's request as it relates to the contested report has merit and warrants favorable action. They recommended that the report be removed entirely, as they cannot determine what performance trait mark or promotion recommendation Petitioner deserves, now that the NJP has been set aside.

c. In correspondence at enclosure (4), PERS-85, the NPC office having cognizance over Navy enlisted advancements, recommended against Petitioner's request for advancement. This advisory opinion stated that Petitioner was not allowed to participate in one advancement examination, but did participate in the next, where his final multiple did not meet the minimum multiple required for advancement; and that deletion of the contested report would not have raised his final multiple sufficiently to allow advancement.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosures (3) and (4), the Board finds the existence of an injustice warranting the following limited corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing therefrom the following enlisted performance evaluation report and related material:

Date of Report	Reporting Senior	Period of Report From To
15Mar99	CDR [REDACTED] LISNR	16Mar98 15Mar99

b. That there be inserted in Petitioner's naval record a memorandum in place of the removed report, containing appropriate identifying data concerning the report; that such memorandum state that the report has been removed by order of the Secretary of the Navy in accordance with the provisions of federal law and may not be made available to selection boards and other reviewing authorities; and that such boards may not conjecture or draw any inference as to the nature of the report.

c. That appropriate corrections be made to the magnetic tape or microfilm maintained by the Navy Personnel Command.

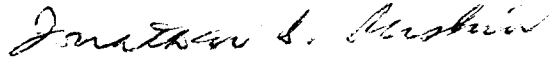
d. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

e. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.


f. That the remainder of Petitioner's request be denied.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


for W. DEAN PFEIFFER
Executive Director

17 JAN 01

MEMO FOR THE RECORD

A [REDACTED] HONED TODAY FOR A STATUS ON HIS CASE. I ADVISED HIM THAT NPC-311 (PERFORMANCE EVALUATION BRANCH) RECOMMENDS REMOVING THE CONTESTED REPORT VICE CORRECTING IT BECAUSE THEY CANNOT DETERMINE WHAT PERFORMANCE TRAIT MARK OR PROMOTION RECOMMENDATION HE NOW DESERVES. HE STATED THAT HE WAS OK WITH REMOVAL OF THE REPORT.

I ALSO TOLD HIM PROMOTION TO E-6 WAS NOT POSSIBLE. I SUMMARIZED THE ADVISORY OPINION RECEIVED FROM THE ENLISTED PROMOTION BRANCH (PERS-85), STATING THAT EVEN DELETION OF THE CONTESTED REPORT WOULD NOT RAISE HIS FINAL MULTIPLE SUFFICIENTLY TO ALLOW ADVANCEMENT. HE STATED THAT HE UNDERSTANDS THAT HE DID NOT ATTAIN THE MINIMUM MULTIPLE REQUIRED FOR ADVANCEMENT WHEN HE LAST TESTED FOR 1ST CLASS, INDICATING THAT REMOVAL OF THE CONTESTED REPORT WOULD AID HIM IN ATTAINING A HIGHER SCORE ON THE NEXT EXAM.

A [REDACTED] STATED THAT HE WOULD NOT BE SUBMITTING A REBUTTAL STATEMENT.

[REDACTED]
CASE EXAMINER

**DEPARTMENT OF THE NAVY**

NAVY PERSONNEL COMMAND

5720 INTEGRITY DRIVE

MILLINGTON TN 38055-0000

1610

PERS-311

19 December 2000

**MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS**

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: AE2(AWN) [REDACTED] USN [REDACTED]

Ref: (a) CO, HM-15 ltr 5812 Ser 10/618 of 31 May 2000
(b) NPC ltr 5800 PERS-832C of 27 Jun 00
(c) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests corrections to his performance evaluation for the period 16 March 1998 to 15 March 1999.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the report in question to be on file. It is signed by the member acknowledging the contents of the report and his right to submit a statement. The member did not desire to submit a statement.

b. The performance evaluation in question is a Periodic/Regular report.

c. Reference (a) set aside the member's NJP on 31 May 2000. Reference (b) informed HM-15 that Petty Officer [REDACTED] official record had been corrected to reflect the set Aside of the non-judicial punishment.

d. Per reference (c), Annex S, paragraph S-12, the trait mark in block-36, the comments in block-43, and his promotion recommendation in block-45 are now considered inappropriate.

e. The member proves the report to be unjust or in error.

3. We recommend removal of the performance evaluation as we cannot determine what performance trait mark or promotion recommendation the member now deserves.



Head, Performance
Evaluation Branch



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

06051-00

1430
Ser 85/1240
5 Jan 01

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL
RECORDS (BCNR)

Via: Assistant for BCNR Matters (PERS-00XCB)

Subj: COMMENTS AND RECOMMENDATIONS IN THE CASE OF
[REDACTED], US [REDACTED]

Ref: (a) BUPERSINST 1430.16D

Encl: (1) BCNR file #06051-00

1. Based on policy and guidelines established in reference (a), enclosure (1) is returned recommending disapproval.

2. Petty Officer [REDACTED] can not be advanced as a result of an examination he did not participate in. Current policy would allow him to take the next Navy-wide examination and if selected for advancement he could petition for backdating of the advancement. [REDACTED] did participate in the next exam cycle, however his final multiple was 158.42 with a minimum multiple of 215.50 required for advancement. Deleting the evaluation of 16 March 1998 to 15 March 1999 would not raise his final multiple sufficiently to allow advancement.

[REDACTED]
By direction